

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ARTHUR L. CLARK, ET AL,)	
Plaintiffs)	
)	
v.)	C.A. NO. 05-30163-MAP
)	
LYNNE BOSCHER, ET AL,)	
Defendants)	

MEMORANDUM AND ORDER REGARDING
REPORT AND RECOMMENDATION WITH REGARD TO
DEFENDANTS' MOTION TO DISMISS
(Docket Nos. 9 & 3)

September 13, 2006

PONSOR, D.J.

This is an action brought by Arthur L. Clark and his family in their capacity as co-trustees of three family trusts against numerous officials of the City of Westfield, alleging that Defendants have conspired to interfere with their development of land located on East Mountain Road.

Defendants moved to dismiss the complaint, arguing that Plaintiffs' claims are no more than ordinary land use disputes that do not support federal jurisdiction.

The Motion to Dismiss was referred to Chief Magistrate Judge Kenneth P. Neiman for report and recommendation. On August 14, 2006, Judge Neiman issued his Report and Recommendation, to the effect that the motion be allowed on the ground that "land usage controversies between a plaintiff and state or local administrative and political

entities do not rise to the level of due process violations, absent evidence of 'fundamental procedural irregularity, racial animus or the like.'" Matney v. City of N. Adams, 359 F. Supp. 2d 20, 23 (quoting Creative Environments, Inc. v. Estabrook, 680 F.2d 822, 831 (1st Cir. 1982)).

Plaintiffs thereafter filed a timely objection to the Report and Recommendation (Dkt. No. 10), and Defendants filed their response (Dkt. No. 11). This court has now had an opportunity to review the issues raised by the Motion to Dismiss, de novo. Based on this review, the court must conclude that the Magistrate Judge's analysis is perfectly correct, and the rationale set forth in this court's Matney decision controls this case. Every week, virtually every day, citizens of local municipalities feel that they are the victims of arbitrary, unreasonable or capricious acts on the part of local authorities. Nevertheless, as Matney notes, prevailing law ordinarily does not re-cast these disputes as due process violations cognizable in Federal Court. This case does not fall into any class of exception to that rule.

For this reason, the court hereby ADOPTS the Report and Recommendation of Magistrate Judge Kenneth P. Neiman dated August 14, 2006 (Dkt. No. 9); the Motion to Dismiss (Dkt. No. 3) is ALLOWED. The clerk will enter judgment for Defendants and the case may be closed.

It is So Ordered.

/s/ Michael A. Ponsor
MICHAEL A. PONSOR
U. S. District Judge